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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,699

09/04/2003

Loren R. Graber

20794-82667

8589

7590

03/27/2006

Barnes & Thornburg
600 One Summit Square
Fort Wayne, IN 46802

EXAMINER

SPAHN, GAY

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/656,699

Applicant(s)

GRABER ET AL.

Examiner

Gay Ann Spahn

Art Unit

3673

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 27 February 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered; or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3-13 and 15-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


Suzanne Dino Barrett
Primary Examiner

Continuation of 11. does NOT place the application in condition for allowance because:

With respect to Applicants' arguments on page 11 (and at other places throughout the After Final Amendment filed on 27 February 2006) that Sinanan fails to show "a selectively removable portion", the examiner notes that any portion of any item is considered "selectively removable" minus any language serving to distinguish otherwise. The examiner notes that the Patent Office is charged with interpreting a claim as broadly as possible and therefore, the broad recitation of "a selectively removable portion" is met by the Sinanan reference. Applicants could have chosen narrower claim language such as reciting perforations, but instead chose the broader language of "a selectively removable portion" and therefore, the Sinanan reference is deemed to read on the broader language of "a selectively removable portion."

With respect to Applicants' arguments beginning on page 11 of the After Final Amendment filed 27 February 2006 that the term "landscape channel liner" is a term of art, it is not apparent to Examiner that the term "landscaping channel liner" has any specific meaning within the art that would serve to read over the applied prior art.

Further, Applicant appears to be arguing a combination of elements when the language of the rejected claims is directed to a liner per se.

On pages 14 and 17 of the After Final Amendment filed 27 February 2006, it is noted that Applicants have reproduced Figs. 1-3 of Sinanan and argued that Sinanan discloses a "raised planter." The examiner notes that she has not applied the embodiment of Sinanan shown in Figs. 1-5. She has only applied the embodiment of Sinanan shown in Fig. 6 and there is nothing in Sinanan precluding this embodiment (or the other embodiment for that matter) from being sunk below ground.

On page 19 of the After Final Amendment filed on 27 February 2006, Applicants argue that Sinanan's "hose-like conduits" (65) residing in the "inwardly turned or rolled upper edges of the side walls" (63) are not connectors. The examiner disagrees. Anything capable of connecting two things may be considered a connector. Further, there must be some friction or interference fit between the "hose-like conduits" (65) and the "inwardly turned or rolled upper edges of the side walls" (63) or else the hose would not stay in place.

With respect to Applicants' argument in the After Final Amendment filed on 27 February 2006 that a prima facie case of obviousness has not been established with respect to the combination of Sinanan and Reum et al., the examiner disagrees. First, the examiner notes (and Applicants have acknowledged) that the motivation to combine Sinanan with Reum et al. need not be found either explicitly or implicitly in the references, but can be found in the knowledge generally available in the art. In the present case, it is both implicit from Reum et al. and also well within the knowledge of one of ordinary skill in the art to "nest" or overlap sidewalls in order to provide more strength to that area than if just one sidewall portion were present. Second, with respect to Applicants' argument that modifying Sinanan by the teachings of Reum et al. would destroy the Sinanan planter for its intended purpose, the examiner disagrees. With the rejection presented within the final Office action, the Sinanan hose 65 would remain in place to act as a connector, (as is presently the case), with the side wall 61 of one channel having top rail 63 truncated, (as is shown by Fig. 14 of Reum et al.), to allow for an overlap between adjacent channel walls 61. The connector 12 of Reum et al. would not be used with the hose 65 of Sinanan acting as a connector. The examiner may have stated "substituting the overlapping sidewall, tubular rail (14), and connector (12) type of connection as taught by Reum et al. for the abutting sidewall, inwardly turned or rolled upper sidewall portion (63), hose-like conduit (65), and support bracket connection of Sinanan. However, one would realize that with the Sinanan hose 65 serving as a connection in its own right the rejection proposes only to modify Sinanan by truncating the Sinanan top rail 63 so as to allow for an overlapping between sidewalls 61 of the Sinanan channel members.

With respect to Applicants' arguments in the After Final Amendment filed on 27 February 2006 that a prima facie case of obviousness has not been established with respect to the combination of Sinanan and Mason, the examiner disagrees. Sinanan's intended purpose is not specifically to be a "raised planter." Rather, the specific purpose of Sinanan is to be a planter and it can perform this function whether it is above ground or below ground. Therefore, the combination of Sinanan and Mason does not destroy the Sinanan planter for its intended purpose.